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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/600,359	09/21/2001	Robert Moule	7376-2	2524
7590 10/06/2003			EXAMINER	
Thomas Q Henry			COURSON, TANIA C	
Woodard Emhardt Naughton Moriarty & McNett Bank One Tower Suite 3700			ART UNIT	PAPER NUMBER
111 Monument Circle Indianapolis, IN 46204			2859	
			DATE MAILED: 10/06/2003	

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No. Application	· ·	_	JA.				
Examiner Tania C. Courson 2559 -The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ② MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Edenacing of time may be available under the provisions of 37 CPR 1.136(a). In an event, however, may a neply be timely filled If No period for regly is pecified above, the maximum statistury period will suply and will supply and vill supply s		Application No.	Applicant(s)				
Tania C. Courson Tania C. Courson 2859		09/600,359	MOULE ET AL.				
The MAILING DATE of this communication appears on the cover sheet with the correspondence address — Period for Repty A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions from many be available used the previous of 3 CER 1.136(a). In or event, however, may a reply be limited by the limited of the provider of 3 CER 1.136(a). In or event, however, may a reply be limited by the limited of the provider of 3 CER 1.136(a). In or event, however, may a reply be limited by the limited of the provider of th	Office Action Summary	Examiner	Art Unit				
Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. ■ Statestions of time may be available under the provisions of 37 CFR 1.38(a). In no event, however, may a reply be timely filed ■ the parties for reply specified above, the maximum statutory period will exply and will expense SIX (6) MONTHS from the mailing date of this. ■ the DATE of reply specified above, the maximum statutory period will exply and will expire SIX (6) MONTHS from the mailing date of this communication. It is the period for reply is appealed above, the maximum statutory period will exply and will expire SIX (6) MONTHS from the mailing date of this communication. It is appealed to reply and the specified above, the maximum statutory period will exply and will expire SIX (6) MONTHS from the mailing date of this communication. It is appealed to the specified above, the maximum statutory period will exply and will expire SIX (6) MONTHS from the mailing date of this communication. It is appealed to the specified status of the specified status of the specified status. It is a specified above, the maximum status of the specified of the scale status of the specified status. It is a specified to specified and specified status. It is action is provided in accordance with the practice under Exp parts Quayle, 1935 C.D. 11, 453 O.G. 213. Status 1) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Exp parts Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 17-29 is/are allowed. 5) Claim(s) 17-29 is/are allowed. 5) Claim(s) 17-29 is/are allowed. 5) Claim(s) 17-29 is/are rejected. 7) Claim(s) 18-29 is/are objected to. 8) Claim(s) 18-29 is/are objected to. 9) The drawing(s) filed on 18-30 is/are allowed. 10) The drawing(s) filed on 18-30 is/are allowed. 11) The proposed drawing correction filed on 26-June 2003 is: a) Saproved by Claim (speci							
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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- 2. Claims 17-23 and 27-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Colley et al. (WO 92/08113).

Colley et al. disclose in Figures 1-2, a marking element, comprising:

a) a first material (Fig. 1, first material 8 and page 8, claim 1) separated from a second absorbent material (Fig. 1, second absorbent material 6 and page 8, claim 1) by a heat disruptable barrier layer (Fig. 1, barrier layer 7 and page 8, claim 1), the first and second materials being such that when the barrier layer is punctured and the predetermined temperature is exceeded the first material flows in the second material to produce a detectable change (Fig. 1 and page 8, claim 1), the first material flows into the second material to produce a detectable change (Fig. 1 and page 8, claim 1), wherein the heat disruptable barrier layer is comprised of a heat disruptable material associated with an element (Fig. 1, ink layer 3 and page 8, claim 1);

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- b) a lower layer (Fig. 1, carrier sheet 2) which together with the heat disruptable layer forms a reservoir for the first material (Fig. 1) and an absorbent layer provided on the opposite side of the barrier layer to said reservoir (Fig. 1);
- c) wherein the absorbent layer is overlaid by a transparent film (Fig. 1, clear layer 9);
- d) wherein the heat disruptable material is a plastics film (Fig. 1, barrier layer/heat shrink film 7);
- e) wherein the element is provided on the heat disruptable material (Fig. 1), and;
- f) wherein the element is provided by a conductive ink (Fig. 1, ink layer 3 and page 8, claim 1).

Regarding claim 17: With respect to the intended use of the apparatus, e.g. for indicating: It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the <u>claimed</u> apparatus from a prior art apparatus satisfying the <u>claimed</u> structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

Regarding claim 17: It has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Therefore, one skilled in the art would use an alternate type of heating energy so that the element is heated in order to suit the needs of the user of the device.

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With respect to claim 23: regarding the term "conductive", the examiner utilizes the following broadest definition: "the ability or power to transmit" (the American Heritage Dictionary, 1992).

Regarding claims 27-28: Where a product by process claim is rejected over a prior art product that appears to be identical, although produced by a different process, the burden is upon the applicants to come forward with the evidence establishing an unobvious difference between the two. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983).

Claim Rejections - 35 USC § 103

- 3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
 - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 4. Claims 17-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colley et al. (2nd interpretation) in view of Germain et al. (US 5,464,968).

Colley et al. disclose a marking element, comprising:

a) a first material (Fig. 1, first material 8 and page 8, claim 1) capable of flowing above a predetermined temperature (Fig. 1 and page 8 claim 1) separated from a second absorbent material (Fig. 1, second absorbent material 6 and page 8, claim 1) by a heat disruptable barrier layer (Fig. 1, barrier layer 7 and page 8,

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claim 1), the first and second materials being such that when the barrier layer is punctured and the predetermined temperature is exceeded the first material flows in the second material to produce a detectable change (Fig. 1 and page 8, claim 1), the first material flows into the second material to produce a detectable change (Fig. 1 and page 8, claim 1), wherein the heat disruptable barrier layer is comprised of a heat disruptable material associated with an element (Fig. 1, ink layer 3 and page 8, claim 1) capable of being heated by energy to effect disruption of said material (Fig. 1 and page 5, lines 29-33);

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- b) a lower layer (Fig. 1, carrier sheet 2) which together with the heat disruptable layer forms a reservoir for the first material (Fig. 1) and an absorbent layer provided on the opposite side of the barrier layer to said reservoir (Fig. 1);
- c) wherein the absorbent layer is overlaid by a transparent film (Fig. 1, clear layer 9);
- d) wherein the heat disruptable material is a plastics film (Fig. 1, barrier layer/heat shrink film 7);
- e) wherein the element is provided on the heat disruptable material (Fig. 1) and;
- f) wherein the element is provided by a conductive ink (Fig. 1, ink layer 3 and page 8, claim 1).

Colley et al. do not disclose an element capable of being inductively heated by electromagnetic energy, the conductive element/ink is a metallic ink or a graphic loaded ink, wherein the element is provided by metal, carbon or an electrically conductive plastics or

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polymeric material, wherein the element is of metal in the form of a film, sheet or foil and a method comprising subjecting the marking element to electromagnetic energy capable of inductively heating said inductive heatable element to effect disruption of the barrier layer.

With respect to claim 17: With respect to the intended use of the apparatus, e.g. for indicating: It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the <u>claimed</u> apparatus from a prior art apparatus satisfying the <u>claimed</u> structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

With respect to claim 23: regarding the term "conductive", the examiner utilizes the following broadest definition: "the ability or power to transmit" (the American Heritage Dictionary, 1992).

With respect to an element capable of being inductively heated by electromagnetic energy, the conductive element/ink is a metallic ink or a graphic loaded ink, wherein the element is provided by metal, carbon or an electrically conductive plastics or polymeric material, wherein the element is of metal in the form of a film, sheet or foil and a method comprising subjecting the marking element to electromagnetic energy capable of inductively heating said inductive heatable element to effect disruption of the barrier layer, Germain et al. teaches a detection apparatus and method using microwave ovens that consists of an element (Fig. 2, ink layer 12) capable of being inductively heated by electromagnetic energy (column 3, lines 1-17), the

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conductive element/ink is a metallic ink (column 6, lines 55-56) or a graphic loaded ink, wherein the element is provided by metal (column 6, lines 55-56), carbon or an electrically conductive plastics or polymeric material, wherein the element is of metal in the form of a film (column 4, line 18), sheet or foil and a method comprising subjecting the marking element to electromagnetic energy capable of inductively heating said inductive heatable element to effect disruption of the barrier layer (column 3, lines 1-17. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the marking element of Colley et al., so as to replace Colley et al.'s ink and associated heating method with the conductive metallic ink and associated inductive heating method, as taught by Germain et al., because both are well known alternate types of inks and associated heating methods, which will perform the same function, if one is replaced with the other, of of disrupting a material when heated.

Regarding claims 27-28: Where a product by process claim is rejected over a prior art product that appears to be identical, although produced by a different process, the burden is upon the applicants to come forward with the evidence establishing an unobvious difference between the two. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983).

Response to Arguments

5. Applicant's arguments filed June 26, 2003 have been considered but are moot in view of the new ground(s) of rejection.

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Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The prior art cited on PTO-892 and not mentioned above disclose a marking element device and method thereof and alternate forms of heating elements;

Christy et al. (US 5,786,578)

Keefer (US 4,786,773)

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tania C. Courson whose telephone number is (703) 305-3031. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez, can be reached on (703) 308-3875. The fax number for this Organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

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DIEGO F.F. GUTIERREZ SUPERVISORY PATENT EXAMINER GROUP ART UNIT 2859

TCC

September 24, 2003